

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1368 of 1996
with
CIVIL APPLICATION NO.8244 OF 1996****For Approval and Signature:****HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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**UNITED INDIA INSURANCE CO LTD - Appellant(s)
Versus
THAVRAJA MANJI NINAMA & 7 - Defendant(s)**

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Appearance :

MR RR MARSHALL for Appellant(s) : 1,
MR BG PATEL for Defendant(s) : 1 - 2.
MR MEHUL H RATHOD for Defendant(s) : 3,
NOTICE SERVED for Defendant(s) : 4 - 7.
MR JV JAPPEE for Defendant(s) : 8,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**and****HONOURABLE MR.JUSTICE MD SHAH****Date : 02/11/2006**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE MD SHAH)**

1. This appeal filed by the United India Insurance Co.Ltd.challenges the judgment and award passed by the Motor Accident Claims Tribunal (Aux.) Sabarkantha District at Himatnagar in M.A.C.Petition no.491 of 1988.

2. Briefly stated, the accident took place on 5-2-1988 at 12.45 hours when deceased Jayendra was on his way to Seva Vidhyalaya, Chhithoda, District Sabarkantha. At the relevant time, he was studying in the 9th standard and was aged 16 years. It was the case of the original applicants-present respondents nos.1 and 2 that on the said date and time, the opponent no.6 Shakraji Manji was carrying out the work of digging well using the tractor bearing registration no.G.U.Z 7557 owned by him as the said work was entrusted to him by the opponent no.5-Contractor. When the deceased Jayendra- the son of the original applicants nos.1 and 2 reached the bank of river Hathmati, an explosion took place and big stones came

flying from the well with great force and one such big stone hit the deceased Jayendra resulting in serious injuries and instantaneous death. Criminal case was registered with the police. As per the case of the original applicants, the deceased Jayendra was clever in his studies and could have fetched a government service after completion of his education since all the members of the original applicants family were Government servants and well educated belonging to schedule tribe. That on account of the accident, the applicants being the parents suffered great pain and shock.. The original applicants, therefore, claimed compensation of Rs.1,50,000/- Allegation is that the accident took place on account of rash and negligent act on the part of the opponent no.6- the driver cum owner of the said vehicle insured with the original opponent no.7 Insurance Company which was in motion at the time of the accident, and therefore, all the opponents are jointly and severally liable to pay compensation. The opponents nos.5 and 6 filed joint written statement at Exh.36 denying all the contentions raised by the claimant in the claim petition including rash and negligent act on the part of the original opponent

no.6 driver-cum-owner. They have also denied the use of the tractor for digging well at the time of the accident. Consequently, they prayed for dismissal of the claim. The opponent no.7-Insurance Company filed written statement at Exh.29 denying almost all the contentions raised in the claim petition and further stated that the accident did not occur on account of the use of the tractor in question and that the accident having taken place at a private place i.e. within the compound of Seva Vidhyalaya, Chhithoda, the Tribunal had no jurisdiction to entertain the petition. According to the Insurance Company the applicants are not entitled to recover Rs.1,50,000/-. It was prayed that the claim be dismissed. The opponents 1 and 2 have filed their written statement at Exh.30 stating that they have been wrongly joined and that no award can be passed against them. They have also denied all the contentions raised in the claim petition and prayed for the dismissal of the claim petition. The opponents nos.3 and 4 did not file any written statement.

3. After recording of evidence and hearing the parties, the Claims Tribunal found driver-cum-owner responsible

for the accident, therefore, partly allowed the claim petition and awarded compensation of Rs.76,000/- to be deposited with the Tribunal with running interest at the rate of 12 percent per annum from the date of the petition till deposit with proportionate costs. Against this award, the present appeal has been filed.

4. Learned Counsel Mr. R.R.Marshall for the appellant-Insurance Company while assailing the judgment and award of the Tribunal has raised only two contentions. Firstly, it was contended that the accident in question had taken place in a private place i.e. in the school compound, and therefore, the Insurance Company cannot be made liable to pay compensation. Secondly, it was contended that the accident in question was not a vehicular accident, therefore, there is no rash and negligent act on the part of the opponent no.6 in using the tractor for the purpose of digging a well.

5. Exh.48 is the Panchnama of scene of offence wherein it is clearly stated that the work of digging well was going on at the time of accident and that stones which came

flying from the well on account of explosion were found scattered near the river Hathmati . Exh.49 is the Inquest Panchnama which shows that the dead body of the deceased Jayendra was lying on the bank of river Hathmati and that head of the deceased Jayendra bore serious head injuries. Punabhai Jivabhai the peon of the school where the deceased Jayendra was studying is an eye witness to the accident. In his deposition at Exh.60, he has deposed to the effect that at the time of the accident with the help of the tractor, boring work for the purpose of digging well was in process and that the tractor was in motion. He has further stated that suddenly explosion took place and a big stone hit the deceased Jayendra when he reached near the river. Thus, the deposition of this witness stands corroborated by documentary evidence on record, namely, Panchnama of the scene of offence, the Inquest Panchnama as also the F.I.R (Exh.44) which contains similar statements as deposed to by this witness. Thus, it is crystal clear from the evidence both oral as well as documentary that the vehicle tractor no. G.U.Z 7557 was used for the purpose of digging well and that it was in motion at the time of the

accident, be it for the purpose of putting the compressor in operation, and therefore, by no stretch of imagination it can be said that the accident in question was not a vehicular accident. It is pertinent to note here that the opponent no.7-Insurance Company has not adduced any evidence to show that if at all compressor is attached to the tractor, the compressor has to be separately insured. The contention of the appellant that the accident had taken place in a private place cannot be accepted for the simple reason that a bare perusal of the Panchnama makes it abundantly clear that the deceased Jayendra was on his way to school and when he reached near the bank of the river Hathmati he sustained serious head injuries owing to an explosion which took place as a result of which he died on the spot and this fact finds corroboration from the deposition of the eye-witness Punabhai. There is nothing on record to show that the bank of the river was within the school compound, and therefore, it can safely be presumed that the accident took place in a public place.

6. Learned Counsel for the appellant has placed reliance on the decision rendered in the case of Oriental

Fire and Insurance Co.Ltd. v. Rabari Gandu Punja & Ors. reported in 1981(1) G.L.R. 1161. However, this decision has no bearing on the facts of the present case. In that case the accident in question has occurred in the compound of a private Company whereas in the case on hand the accident occurred in a public place i.e. bank of the river.

7. Be that as it may, there is also another aspect of the matter. In the instant case, opponent no.6 driver-cum-owner of the vehicle involved in the accident had contested the claim, and therefore, the Insurance Company cannot contest the claim on the ground of negligence and quantum of compensation. Reference in this connection may be had to the decision rendered by the Division Bench of this Court in the case of United India Insurance .Ltd vs. Hasmukh Hirjibhai Chauhan through guardian Pushpaben reported in [2006] 11 G.H.J (59). It will not be out of place to state that this appeal is capable of being dismissed on this ground alone.

8. In view of what is discussed here-in-above, even on

merits we are of the considered opinion that the learned Tribunal was perfectly justified in passing the judgment and award dated 5-1-1996 in M.A.C. 491 of 1988 partly allowing the claim petition which calls for no interference at our hands. Consequently, the appeal fails and is hereby dismissed with costs.

9. In view of the dismissal order passed in the main First Appeal, the interim stay granted earlier stands vacated. Civil application stands disposed of. Rule is discharged.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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